

School Impact Fee Working Group
(Established by Act 246, Session Laws of Hawai'i 2005)
State of Hawai'i
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Minutes of Meeting

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawai'i Revised Statutes.

Date: Friday, October 6, 2006

Time: 9:00 a.m.

Place: State Capitol
415 South Beretania Street
Conference Room 225
Honolulu, Hawai'i

Present: Senator Sakamoto, President of the Senate Designee
Austin Imamura, Designee for the Mayor of the City & County of Honolulu
Randy Moore, DOE, Superintendent of Education Designee
Anthony Ching, Executive Director, Land Use Commission
Councilmember Mel Rapozo, President of the Hawai'i Association of Counties
Duane Kashiwai, DOE Employee whose primary area of responsibility is repair and maintenance, capital improvement projects, and land use planning
Patricia Park, DOE, Central Oahu Complex Area Superintendent
Dean Uchida, Executive Director, Land Use Research Foundation
Bob Bruhl, Development Community Member

Marion M. Higa, State Auditor, Office of the Auditor
Pat Mukai, Secretary, Office of the Auditor

Ralph Portmore, Group 70 International

Absent: Representative Takumi, Speaker of the House of Representatives Designee

Call to Order: Chair Sakamoto called the meeting to order at 9:05 a.m., at which time quorum was established.

Chair's Report: **Announcements, Introductions, Correspondence, and Additional Distribution**

Minutes of Previous Meetings

On a motion by Member Uchida, seconded by Member Ching, the Working Group voted unanimously to approve the minutes of the September 1, 2006 meeting.

Election of Vice Chair

Chair Sakamoto asked for nominations for the Working Group Vice Chair.

Member Imamura moved to nominate Member Uchida, seconded by Member Ching. Member Moore moved to close the nominations, seconded by Member Councilmember Rapozo.

It was voted on and unanimously carried to elect Member Uchida as Vice Chair of the Working Group.

Other

Member Kashiwai mentioned on behalf of Member Bruhl that the site visit to Le Jardin Academy is set for Friday, October 13, 2006 at 8:00 a.m.

Consultant's Update

Mr. Ralph Portmore, Group 70 International, stated there were no updated findings to report on. He explained what happened when the last school impact fee study was conducted and why there were shortcomings. In order to pass legislation, stakeholders must be able to anticipate in the outcome. The previous school impact fee study did not clearly define what was going to happen. The current Working Group process is different because it provides for stakeholder input. In hindsight, Central Oahu may not have been the best selection for a case study. Where there is greenfield development, it's very straightforward, simple, and easy to understand.

Where there is a mix of existing schools and substantial development, it's more difficult. That kind of area would have made for a better case study. So, Ewa would have been a better case study because there's quite a lot of existing development – Ewa Beach, Makakilo, West Loch, etc., which raises the issue of whether there is a need for another case study.

Chair Sakamoto asked how far along the consultant is in its work in the greenfield part. Mr. Portmore answered that they will be ready for the November meeting. Gentry Waiawa and Koa Ridge present pure greenfield areas.

Vice Chair Uchida stated that in drafting the legislation, part of the thinking was to address the confusion and preconceived notions about impact fees. Everybody needs to understand what makes an impact. Applying agricultural land to the new development is the easiest way of applying that methodology.

Vice Chair Uchida asked if it's possible for the report to include recommendations on the next steps to take. Mr. Portmore replied that they hope to do this for greenfield-type development. This issue should be discussed at the November 20th workshop. So, at the end of this process, the stakeholders in the Working Group should be clear on what's being proposed for greenfield-type development.

Mr. Portmore said, in Central Oahu, there are new developments being developed by major developers who have land to dedicate to schools. This makes Central Oahu relatively easy. In other areas—for example Ewa, Central Maui, West Maui, North Kona and so forth—developers are typically smaller.

Member Moore stated that the question is where should the school go. Where is the logical place to put the school? That's a much easier question to answer when it's only Gentry or only Castle & Cooke—it's a much harder question to answer in Central Maui. The land cost in the 2001 study is so far below the current value. The developer will say \$100,000 per acre, that is, the developer provides the land and is credited \$100,000 per acre. This is very disproportionate. Chair Sakamoto asked whether DOE sets the price. Member Moore replied the DOE uses Mr. Portmore's old formula.

Mr. Portmore said they still have to come up with a realistic value for the land that's going to be dedicated in this greenfield development scenario and that is a necessary part of this case study. Mr. Portmore's hope is that they can suggest ways to arrive at a fair price. He indicated that proposed legislation would not establish areas where impact fees would be charged. It would establish a process to establish those areas. Then the question becomes, once the study is done, who actually blesses it and makes it official? Does it go back to the Legislature? Does the school superintendent do that or does the Board of Education do that?

Ultimately, it's up to the Legislature to determine who should take responsibility. Chair Sakamoto asked what percent should be public money, taxpayer's money, and what percent should be from the homeowner through the developer. Mr. Portmore stated the case study should come up with a number so stakeholders can see what it means. It is a policy decision as to what proportion should be paid by the developer. Member Imamura asked Mr. Portmore if he will be coming up with a recommendation as to proportion. Mr. Portmore answered, as to proportion, no. The consultant's job is to come up with a mechanism that everyone understands and can agree to.

Mr. Portmore commented that the study will reflect data from other areas and will show what developers are paying in those areas. The current study will provide draft legislation for two very different scenarios: greenfield and non-greenfield. More extensive analysis will be needed for the non-greenfield area. The consultant looked at whether it would be feasible to do a second study and determined that they could do the second case study with the available funds. They project that it would add about a month to their completion time, so completion would be around early January. The decision must be made soon because they would have to start now. The consultants estimated that the work could be done for approximately \$20,000.

Chair Sakamoto suggested that the Working Group make a decision later during this meeting.

Mr. Portmore also stated that on the mainland, it's almost a self-selection process. Impact fees happen where growth occurs. There's a need for a rational nexus—impact fees are needed to build new schools, impact fees are not needed when you don't need to build new schools.

Vice Chair Uchida asked for clarification on declining student enrollment. Mr. Portmore indicated that impact fees occur where the whole school district is growing.

Member Councilmember Rapozo asked whether the taking on another case study conflicts with the bill, since it requires one case study. Ms. Higa responded that Act 315 adds additional monies. Vice Chair Uchida asked whether, instead of doing a second case study, the group should pursue a broader statewide study. Mr. Portmore answered that a statewide study would take time and may not result in timely legislation.

Member Bruhl indicated the core issue is a shifting student population. Maybe a statewide study is not necessary. Maybe it's more important to come to some agreement on a geographic area, one where there's going to be significant enough development to trigger new schools. Mr. Portmore suggested Ewa for the second case study.

Chair Sakamoto stated that, based on the DOE six-year projection, new schools would be needed in: Leeward area (1-2 new elementary schools); Hawai'i County (2-3 new elementary schools); and Maui (1-2 new elementary schools). One of these areas should be selected. Mr. Portmore said they would like to look beyond six years and suggested Ewa and West Oahu. There was an article in the Advertiser that reported growth by 14,000 units in Central Oahu, 29,000 units in Ewa, and 9,000 units in West Oahu.

Member Ching asked for the current contract amount. Ms. Higa responded \$145,000. Member Ching said that an additional \$20,000 would buy another case study. Mr. Portmore clarified that the legislation would not say whether an impact fee would be charged here or there. It would merely set up the mechanism by which DOE would go through a process to establish those impact fee areas and the amount of the fees.

Chair Sakamoto asked whether the Working Group could enter into executive session to discuss the contract amendment. Ms. Higa said that the group would have had to notice an executive meeting. Member Ching asked whether discussion of the consultant would trigger an HRS Chapter 91-9 executive session to discuss personnel matters. Member Councilmember Rapozo stated that this situation does not appear to qualify for executive session. Ms. Higa agreed and added that the agenda calls for decision making. The group can do decision making whether Group 70 is present or not.

Mr. Portmore requested a decision on the second case study. Member Ching withdrew his request to meet separately and stated that to be efficient, the group should push on and get it done. Vice Chair Uchida didn't want to lose sight of the underutilized school discussion.

Chair Sakamoto asked for a motion requesting the Auditor for resources to add to the scope. It was moved by Vice Chair Uchida, seconded by Member Councilmember Rapozo, and unanimously carried to authorize the Auditor to work with the consultant and expand the scope. Mr. Portmore suggested designating 1-3 Working Group members to work with the consultant to

make a decision on the area to be studied. Chair Sakamoto suggested that Members Kashiwai and Uchida work with the consultant and the Auditor's office.

Member Councilmember Rapozo asked how do impact fee assessment and self assessment work. Mr. Portmore answered that once an impact fee area is defined, anybody who pulls a building permit would have to pay a fee.

Member Councilmember Rapozo asked whether there are other jurisdictions where counties collect the school impact fee as, for example, a special assessed tax and then somehow transfer the funds to the school districts. How are county collected funds transferred to the state? Mr. Portmore answered that Hawaii developers are actually building schools. Developers have an agreement with DOE that covers the amount of the impact fee and their involvement in the construction of schools (if it's a design-build, the developer might provide some of the service). Vice Chair Uchida stated that in Ewa, it's a state and county impact fee. The county collects it and transfers the funds, which is not a problem. Mr. Portmore clarified that at present, the agreement involves a one-time up-front fee to be applied to a one-time up-front construction cost. Member Councilmember Rapozo asked whether the state builds the school, to which Mr. Portmore answered that it's up to the parties. If they agree that the developer will build for DOE, that arrangement is covered in a separate agreement.

Member Ching wanted confirmation that the final report will discuss methodology, that is, the means by which sums of needs and funding streams would be understood. Without this, the group can't reach a conclusion as to what might be a base for policy-making with respect to contributions by developers. His understanding is that other factors are going to be considered in the second phase of the case study, which is designed to consider infill situations. Member Ching also stated that the issues of phasing, synchronizing funding, and concurrency should be discussed. Currently, is the county collecting fees for the Ewa area? If dollars are accumulating, Member Ching proposed that the report should discuss the financing and collection method so that the whole process can be synchronized. He continued that he is uncomfortable with the notion that a statewide impact fee mechanism is going to be a silver bullet. In growth areas, perhaps a school improved district should be established. Member Ching expressed concern that the study would end up as just another study with some methodology that is not linked to reality. He felt strongly that the Working Group needs to be specific and make DOE accountable. In summary, he expressed the need for the following critical elements in the report: discussing points of collection; synchronizing of the funding stream; making sure the numbers are realistic to hold DOE accountable; and making sure there is a rational relationship, a nexus.

Chair Sakamoto asked whether the school improvement district idea can be done now? Member Moore responded that DOE relies on geography, but as everyone knows, geography changes over time. For example, Pearl City High School doesn't have what it used to have. Perhaps there needs to be an assumption that every 5 to 10 years, or after every census, school improvement districts need to be re-drawn, re-created, or abandoned. There needs to be a mechanism.

Member Ching said there needs to be some clarity, some consistency, as to how schools are developed. If public schools are required to provide free and appropriate public education, there's no guarantee as to the location. DOE is faced with making some pretty good guesses as to what the capacities are in a particular area. At some point, will it say that, in Mililani, the multi-track is maxed out and unless another school is built, kids will have to go elsewhere for school. This brings up the discussion of underutilized schools. Member Ching reminded the Working Group members to think long-term and to expect that every so many years—whether it's 10, 5, every year, every quarter—lines might need to be re-drawn. There has to be a mechanism that people can rely on.

Member Ching indicated that at some point, the DOE is going to need to consider whether, before it builds a new school, it closes some because they're underutilized. Chair Sakamoto stated that everyone needs to know what they need and from whom—counties, state, various agencies, developers. He agreed that part of the issue is how to deal with developers who plan to build

6,000 homes over 20 years, and the expectation is for the school to be built in year 1, 2, and so on. The group has to arrive at a suggestion for some sort of funding and approval stream.

Member Ching indicated everything is in the mix. In the end, we're going to need to figure out if it's a state law that's needed or just better coordination. There's no sense in coming up with an impact fee law that is not going to work.

Chair Sakamoto asked Members Ching, Rapozo, and Imamura for their assistance regarding the commission and the counties, respectively. Member Councilmember Rapozo stated that there should be some assessment now and not after the report. There needs to be a determination of where there are underused and overused facilities.

Chair Sakamoto stated that on the county level, then, it's really the approval process. How can this discussion integrate that process? Member Councilmember Rapozo commented for the counties, whether it's the planning commission or the council, there would need to be some kind of enabling legislation from the state to the county. There has to be a mechanism because the counties don't have the authority to assess.

Member Ching indicated that there's a confused reality now because Waiawa was passed by the commission without an educational condition. Subsequently, at the zoning level, there were agreements made by the developer, Gentry, to provide for schools. When the commission considered Koa Ridge, it was a little bit different because the developer jumped in and said it would be good to have schools in this large, new planned community. The developer was openly engaged in the discussion to develop schools. About a year and a half ago, the commission heard from the Maui planning director that Maui would not pursue educational conditions at the SMA level or at zoning because Maui felt it was a state function. That resulted in an inconsistent application at the county level. Member Councilmember Rapozo related that on Kauai, there was a condition imposed by the county to the developer to allocate five acres for a school, but the DOE is not ready to build. It's designated as school property.

Member Ching said that currently the smallest DOE elementary school requires 12 acres. High schools require 50 or more acres. If the county is going to take action to support development of new schools, everyone should be using consistent facts, what are the needs for dedication, and is it fair.

Vice Chair Uchida noted that the discussion is on two different levels: 1) policy; and 2) implementation. He suggested that the study should move forward. When the study comes out, members will understand how the whole thing will work.

Chair Sakamoto looked to the DOE members to come up with realistic assumptions on creating school improvement boundaries. The consultant will be expected to do a good job on the study. The public can attend the Working Group meetings and provide input during the process.

Member Park commented that there is always discussion about underutilized schools and moving students out of their home area to those underutilized schools, which is one option. There is a procedure and policy on how to change district lines. However, when you do that, you are affecting people that are in a given area. If you change the boundaries of the DOE district, you affect all schools in that district and the families. It isn't just looking at one school that's underutilized. Member Bruhl added that there is not enough flexibility in the system to move families within districts to utilize the underutilized schools. Member Park said that DOE's goal is to build a strong complex, a strong curriculum for K-12. Chair Sakamoto suggested that the underutilized school discussion is part of the proportionate share discussion.

Member Park added that moving students around impacts the schools and the funding from the weighted student formula. Chair Sakamoto stated that this group cannot answer all of the underutilized and geographic exception questions. Member Councilmember Rapozo stated that the counties need to know what the requirement is for schools. If it's not there, it didn't go to the LUC, and it's coming to the county, then obviously the county needs some direction.

Member Bruhl added that at the end of the day, it is likely that this group will have a number. The numerator should be the cost of these schools and the case study based on these estimates, and the denominator should be the number of units and a whole bunch of math in between that gets everyone comfortable on fairness and balance. The numerator is ultimately going to be critically important to this group to understand if we're going to be proposing a number. DOE is obviously the entity today that's responsible for building schools. They are going to have the best number for the cost of building schools in the state. Mr. Portmore stated that what has been done in the last five years is to figure out how much it costs per student, that's the numerator. Member Bruhl asked whether the DOE numbers merit any discussion, comparison, or comparability on how they were derived. Member Bruhl said he was told that in the case of Kapolei High School, it cost (outside of the land cost) somewhere around \$100 million to build the school. Member Kashiwai clarified that the number is high, but not far off. Middle schools are estimated at \$60 million.

Member Bruhl hopes that the group will arrive at something fair and realistic by the end of the day. Mr. Portmore indicated that nexus says you have to base it on a real cost. Over time, what you build is going to change – it might go up, it might go down, and the fee would be adjusted accordingly. Member Ching stated that the numerator should reflect regional costs. Mr. Portmore said that perfecting methodology can become a black hole. At some point, you say, this is good enough. Ultimately, Chair Sakamoto wants the group to feel comfortable with the numerator and believe that the numerator makes sense. The denominator is different. The fair share discussion is a major discussion. With confidence in the numerator, however, confidence in the denominator should come with a mechanism, some process.

Member Bruhl raised the issue of when a developer puts the money for the school in escrow. Another complication is when the budget for schools is approved by the Legislature. Member Ching raised the issue of priority lists. An example is the immediate dedication of DOE moneys to rebuild a cafeteria or other building that burned. The rebuilding would take priority over the new school. How does this get balanced?

Chair Sakamoto stated that the goal is, at the end of the day, to have a better mechanism, considering ample cost, geographically adjustments, boundaries, nexus, and agreement from all developer stakeholders. Chair Sakamoto committed to push for passage of the proposed law, but only if the group has confidence that the numbers, the projections are right.

Member Ching asked about the up-coming Working Group meetings. Mr. Portmore suggested an extensive session during the November 20, 2006 meeting to resolve 80 to 90 percent of the issues. Member Moore indicated that the group needs two things from DOE: 1) school improvement districts; and 2) the numerator. The approach would be to take the most recent new school to be built, the cost, design capacity, make whatever adjustments are appropriate, and come up with a generic number. The adjustments will relate to unusual site conditions and cost differential and that would come down to a most recent, standard school cost for elementary, middle, and high school. Chair Sakamoto suggested to cost out the various factors in several columns. Mr. Portmore asked about the second case study. He clarified that the bill would not establish new districts, rather it would establish a very clear process that will hopefully allow the superintendent to identify a district and say what the fee is going to be in that district. Mr. Portmore indicated the bill will establish a process for setting up the school impact fee districts. That process will be very simple for the greenfield area. It will be more complex for non-greenfield areas. Chair Sakamoto asked what is the actual share for developers in Waiawa. Mr. Portmore answered 15 percent. If you go further back, it gets lower.

Member Bruhl asked if a school cost x-millions of dollars and it's built to last 50 years, is there some sort of discount provided off the cost of that school because the developer is not around for 50 years. Chair Sakamoto asked if there are examples from other jurisdictions. Mr. Portmore indicated that according to Mr. Clancy Mullen, how long the initial occupant stays in the house is not relevant. The state will have to provide school facilities for that housing development.

Chair Sakamoto commented, since most of the mainland jurisdictions use property taxes to fund schools, that's not a fit for Hawaii. Member Councilmember Rapozo explained the county process. The county designates a district, actually the developer pays for that, they get the

consultants, they go out and hire these experts that will actually draw out the districts that will be considered the community's facility district. It would be the project area. At that point, let's say the state, DOE or whoever, is the entity that says we'll be paying x-amount for the new school your development would impact. Let's say it's \$20 million, or \$25 million, they go to the respective council to ask for the county to apply this special tax on the real property tax and it could be amortized over 20 to 30 years. The impact is to the individual homeowner that buys and it only affects that district, it won't affect anybody else. It could be \$2,000/year, \$1,500/year, \$800/year, depending on what the cost is. It's a wonderful tool and it really doesn't affect the developer.

Member Bruhl said he met with an investment banker who has been working with certain developers throughout the state to try and evaluate the enabling legislation. He understands that there's a certain cap that the bankers think you can tax, which might be 2 percent. If a developer says there are 10,000 homes coming to an area, and that was the community facilities district, the bank would actually run some numbers based on the expected sales prices or value of the homes and the eligible commercial properties. If the bank determines that it can go up another 3/8 percent, then you take the number of homes, their value, and times it by 3/8 percent, that's a revenue stream and that revenue stream can be leveraged. You can raise so many funds in the public market place by issuance of bonds. That's basically the financing idea. There are a log of technicalities, so if the group is interested, Member Bruhl offered to check on their availability.

Chair Sakamoto asked for the consultant's comment. Mr. Portmore answered they are going to look at the community facility district in the report. Chair Sakamoto said hypothetically, the fair share could be part impact fee, part facilities district via property taxes, part general population tax, or no impact fee. Mr. Portmore stated it's another way to collect impact fee. Chair Sakamoto indicated that there would need to be a special meeting to discuss bonding and other financing alternatives.

Planning: Chair Sakamoto asked Member Moore to talk about DOE's priorities. Vice Chair Uchida indicated we should include more people in the discussion, especially the two developers, as the policy questions come up. He would like to see their reaction. Ms. Higa commented as long as you notice what you're going to do at the meeting, you can invite anybody you want to. Any member of the public has the right to speak. Chair Sakamoto emphasized, if people have suggestions on who might be put on the agenda, to please let the Auditor's office know. The Auditor indicated we need to post the notice before the 16th of November. Please let the Auditor's office know prior to the 16th on agenda items. Chair Sakamoto said one of the main things is approaching fair share for discussion. Ms. Higa indicated, for the November 20th meeting, the meeting will be noticed as an all day meeting and lunch will be provided. To work through lunch is a more efficient use of the group's time.

Next Meeting: Monday, November 20, 2006, all day

Adjournment: With no further business to discuss, Chair Sakamoto adjourned the meeting at 11:53 a.m.

Reviewed and approved by:



Jan Yamane
Deputy Auditor/In-House Counsel

November 21, 2006

☒ [X] Approved as circulated.

☐ [] Approved with corrections; see minutes of (date) meeting.

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